

STATE OF SOUTH CAROLINA

(Caption of Case)

Example: Application for a Class C Charter Certificate from
John Doe dba Doe's Limo

Application for a Class C Charter
Certificate From Diamond Transportation, LLC

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

TRANSPORTATION COVER SHEET

DOCKET

NUMBER: 2011 - 45 - T

If this is your first time filing an application with the PSC, you will not have a Docket Number. The Commission will assign one to you. If you have filed with the Commission before, a Docket Number was assigned and should be entered above.

(Please type or print)

Submitted by: DIAMOND TRANSPORTATION, LLC.

Telephone: 843-247-2156

Address: 5 GUMTREE RD C-3

Fax: 843-681-2881

HILTON HEAD

Other:

SOUTH CAROLINA 29926

Email: eastcoasticel@aol.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

NATURE OF ACTION (Check all that apply)

☐ Application - Class A/A Restricted

☐ Request for Name Change on Certificate

☐ Application - Class C Taxi

☐ Request to Amend Scope of Authority

☒ Application - Class C Charter

☐ Request to Amend Tariff (rate increase, etc.)

☐ Application - Class C Charter Bus

☐ Request to Amend Passenger Limit

☐ Application - Class C Non-Emergency

☐ Request

☐ Application - Class C Stretcher Van

☐ Exhibit

☐ Application - Class E Household Goods

☐ Late-Filed Exhibit

☐ Application - Class E Hazardous Waste

☐ Letter

☐ Application

☐ Proposed Order

☐ Request for Extension to Comply with Order

☐ Publisher's Affidavit

☐ Request for Order Granting Authority to Obtain a Certificate of Public Convenience and Necessity to be Rescinded

☐ Reservation Letter

☐ Request for Cancellation of Certificate

☐ Response

☐ Request for Suspension

☐ Return to Petition

☐ Request for Reinstatement

☐ Other:

If you have any questions about this form, please contact the PUBLIC SERVICE COMMISSION at 803-896-5100.

Posted
1/21/11 @ 2:30
ybs

RECEIVED
JAN 26 2011

RECEIVED
JAN 27 2011
PSC SC
CLERK'S OFFICE

833

227825

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
 101 Executive Center Drive, Suite 100
 Columbia, South Carolina 29210
 (Mailing address: Post Office Drawer 11649, Columbia, SC 29211)

Phone: (803) 896-5100 Fax: (803) 896-5199

**APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR
 OPERATION OF MOTOR VEHICLE CARRIER**

RECEIVED

Date: 1/24/2011

JAN 26 2011

CLASS C - CHARTER

T.T.W.W.W

Application is hereby made for a Certificate of Public Convenience and Necessity, in accordance with the provision of S.C. Code Ann., § 58-23-10, et seq. (1976), and amendments thereto.

1. Name under which business is to be conducted (corporation, partnership, or sole proprietorship, with or without trade name.)

DIAMOND TRANSPORTATION LLC.

18 HUNTER RD SUITE 3 HILTON HEAD S.C. 29926

Street Address of Applicant

5 GUMTREE RD C-3 HILTON HEAD S.C. 29926

Mailing Address of Applicant if different from street address

843-247-2156

Phone

843-681-2881

Fax

eastcoastice1@aol.com

Email Address

2. If incorporated, a copy of Articles of Incorporation must be attached. (If incorporated outside of SC, attach SC Secretary of State "Foreign Corporation" Certificate.)

3. Select Entity Type: (Check one)

☒ Individual Owner/Sole Proprietorship

☐ Partnership - List names and address of all person having an interest in the business.

☐ Corporation - List names and addresses of two principal officers.

THOMAS ENRIGHT 5 GUMTREE RD C-3 HILTON HEAD SC 29926

Applicant is financially able to furnish the services as specified in this application and submits the following statement of assets and liabilities.

BALANCE SHEET

Balance at Time Application is Filed:

Month JANUARY Year 2011

Assets:

Cash	30,000.00
Receivables	7,000.00
Real Estate	600,000.00
Buildings and Equipment (Net)	3,000.00
Motor Vehicles (Net)	150,000.00
Garage Equipment (Net)	1,000.00
Machinery and Tools (Net)	
Supplies on Hand	500.00
Prepays and Other Assets	
Total Assets	791,500.00
<u>Liabilities and Equity:</u>	
Accounts Payable	
Notes Payable	
Mortgages Payable	150,000.00
Equipment Obligations	50,000.00
Accrued Salaries and Wages	
Other Accrued Obligations	
Other Liabilities	
Total Liabilities	200,00.00
Capital Stock	
Retained Earnings	
Total Equity	
Total Liabilities and Equity	400,000.00

PROPOSED RATES AND CHARGES FOR SERVICE

Maximum Proposed Rates and Charges for Service are as follows:

85.00 PER HOUR

25.00 PER PERSON FOR THE FIRST MILE 3.00 EACH ADDITIONAL

Counties to be Served:

BEAUFORT, JASPER, CHARLESTON

Maximum Number of Passengers per Vehicle:
SEDAN 5, VAN 14

14

DESCRIPTION OF EQUIPMENT

[illegible]

INSURANCE QUOTE

This form **MUST BE COMPLETED AND SIGNED** by an **AUTHORIZED INSURANCE COMPANY REPRESENTATIVE**. The insurance quote must be complete, listing current insurance premiums. At the discretion of the Commission, a copy of current insurance policies may be required. Do not provide a copy of insurance policies unless requested.

The following insurance quote is for:

DIAMOND TRANSPORTATION

Name of Motor Carrier

5 GUMTREE RD C-3 HILTON HEAD S.C. 29926

Address of Motor Carrier

Amount of Premium:

Limits Quoted: (See Below)

Liability Insurance \$ 300,000

Limits 300,000

The above quoted premium is for a term of 12 months.

Minimum Limits - Intrastate Only:

1-7 Passengers \$ 25,000/50,000/25,000

8-15 Passengers \$ 25,000/100,000/25,000

VENTURE SPECIALTY INSURANCE

Name of Insurance Company

PO BOX 18026 RICHMOND VA 23226

Home Office Address of Company

I am familiar with the Commission's Rules and Regulations relating to insurance requirements and the above quote meets the minimum insurance limits prescribed. The insurance company making this quote is authorized by the South Carolina Department of Insurance to do business in South Carolina.

1/24/2011

Date

CLARK WHITE

Authorized Insurance Company Representative's Signature

NOTICE:

If you wish to self-insure your motor vehicles for liability and property damage, you must comply with S.C. Code Ann. Sections 56-9-60 and 58-23-910. For more information, contact Vickie Coker with the Department of Motor Vehicles at (803) 896-8457.

If you wish to apply as a self-insured for worker's compensation coverage in South Carolina you may do so with the South Carolina Worker's Compensation Commission (WCC) provided that you will be able to: 1) post a surety bond or letter-of-credit with the WCC for a minimum of \$500,000, 2) agree to pay a yearly self-insurance tax, and 3) agree to pay an annual assessment to the South Carolina Second Injury Fund. For more information, contact the WCC Self-Insurance Division at (803) 737-5712 or on the web at www.wcc.state.sc.us/self-insurance.

Exhibit FWA

DIAMOND TRANSPORTATION LLC.

Name of Applicant

1. Are there currently any outstanding judgments against the Applicant?

☐ Yes

☒ No

If Yes, indicate nature of judgement(s) against applicant.

2. Is Applicant familiar with all statutes and regulations, including safety regulations and governing for-hire motor carrier operations in South South Carolina, and does Applicant agree to operate in compliance with these statutes and regulations?

☒ Yes

☐ No

3. Is Applicant aware of the Commission's insurance requirements and the insurance premium costs associated therewith?

☒ Yes

☐ No

Exhibit on Driver Qualifications

1. Applicant understands that all drivers must be a minimum of 18 years of age.

☒ Yes ☐ No

2. Applicant understands that a certified copy of the driver's three (3) year driving record issued by the SC DMV and such record from the DMV of the state in which the driver is or has been domiciled for such period must be maintained in the Applicant's business office.

☒ Yes ☐ No

3. Applicant understands that a criminal history background check from the state where the driver currently lives must be maintained in the Applicant's business office.

☒ Yes ☐ No

4. Applicant understands that all drivers operating a vehicle under a Class C Charter Certificate must have in their possession when operating a charter vehicle, a valid driver's license issued by the SC DMV or the current state of residence of the driver.

☒ Yes ☐ No

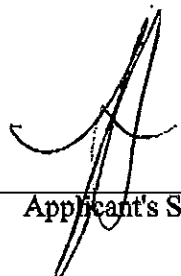
5. Applicant understands that all Class C Charter Certificate holders are prohibited from employing or leasing vehicles to drivers who are registered, or required to be registered, as sex offenders with the South Carolina State Law Enforcement Division or any national registry of sex offenders.

☒ Yes ☐ No

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
POST OFFICE DRAWER 11649
COLUMBIA, SOUTH CAROLINA 29211

Applicant is familiar with the provision of S.C. Code Ann. §58-23-10, et seq.(1976), and amendments thereto, and R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers (Vol.26, S.C. Code Ann., 1976), and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers (Vol.23A, S.C. Code Ann.,1976) and amendments thereto, and hereby promises compliance therewith.

STATE OF SOUTH CAROLINA)
COUNTY OF Beaufort)


Applicant's Signature

I, THOMAS ENRIGHT, OWNER
Name of Applicant's Representative Title

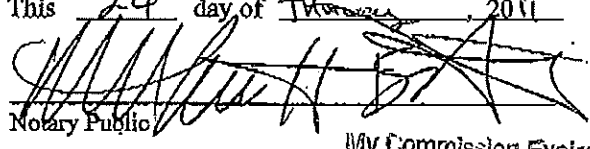
of DIAMOND TRANSPORTATION LLC,
Applicant

the Applicant for the Certificate of Public Convenience and Necessity as set forth in the foregoing, swear or affirm that all statements contained in the above application are true and correct.


Signature of Applicant's Representative

SWORN TO BEFORE ME

This 24 day of November, 2011


Notary Public

My Commission Expires
Commission Expires July 26, 2012

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

DIAMOND TRANSPORTATION, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on February 1st, 2010, with a duration that is at will, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great
Seal of the State of South Carolina this
3rd day of February, 2010.

Mark Hammond
Mark Hammond, Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/17/2011

PRODUCER
Venture Specialty Insurance, LLC
PO Box 18026
Richmond, VA 23226

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Thomas Enright Enterprises DBA Diamond Transportation
5 Gumtree Road Apt C-3
Hilton Head, SC 29926

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: StarNet Insurance Company

40045

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADPT. LTR. 00000	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/>				EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/PROP AGG \$
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS <input checked="" type="checkbox"/> Underinsured - 25/50/25 <input checked="" type="checkbox"/> Uninsured - 25/50/25	TXE1000225-00	12/16/2010	12/16/2011	COMBINED SINGLE LIMIT (Ea accident) \$300,000 BODILY INJURY (Per person) \$300,000 BODILY INJURY (Per accident) \$300,000 PROPERTY DAMAGE (Per accident) \$300,000
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA AGG \$ AGG \$
	EXCESS / UMBRELLA LIABILITY OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N If yes, describe under SPECIAL PROVISIONS below				NO STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATION(S) / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Traditional taxi service operating in Hilton Head, SC and its surrounding areas.

Cert Holder is Additional Insured

CERTIFICATE HOLDER

Hilton Head Airport-Beaufort County
120 Beach City Road
Hilton Head, SC 29926

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

**DIAMOND TRANSPORTATION, LLC
OPERATING AGREEMENT**

THIS OPERATING AGREEMENT, is effective as of the 6 day of February, 2010 and is entered into by **THOMAS J. ENRIGHT**.

WHEREAS, THOMAS J. ENRIGHT is the sole Member of the South Carolina limited liability company known as, **DIAMOND TRANSPORTATION, LLC ("COMPANY")** pursuant to the terms and conditions of the South Carolina Limited Liability Company Act; and

WHEREAS, THOMAS J. ENRIGHT desires to execute this Operating Agreement to govern the conduct of the business and affairs of the Company and to set forth other matters concerning the Company; and

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Members intend to be legally bound, do hereby agree as follows:

1. Certain Definitions.

When used herein, the following terms shall have the meanings set forth below:

- 1.1 "Agreement" means this Operating Agreement as the same may be amended and modified from time to time.
- 1.2 "Articles" means the Articles of Organization, and all amendments thereto, executed and filed pursuant to applicable laws and the terms of this Agreement.
- 1.3 "Code" means the Internal Revenue Code of 1986, as amended. All references herein to specific sections of the Code shall be deemed to refer also to the corresponding provisions of succeeding law.
- 1.4 "Company" means **DIAMOND TRANSPORTATION, LLC**.
- 1.5 "Disabled" means a Member is unable to render services for the benefit of the Company due to substantial physical or mental impairment, illness, or adjudicated incapacity for a continuous period exceeding ninety (90) days.
- 1.6 "Distributional Interest" means a Member's interest in distributions and allocations made by the Company, but not in the management of the Company.
- 1.7 "Major Decision" means a decision with regard to i) distributions under Section 4.2, hereof; ii) purchasing or selling real property; or iii) incurring debt or refinancing current debt.

- 1.8 "Member" means **THOMAS J. ENRIGHT**, and his successors.
- 1.9 "Person" means any individual, limited liability company, limited liability partnership, partnership, corporation, trust or other person or entity.
- 1.10 "Significant Event" means when a Member dies, files for divorce or dissolution, files bankruptcy, or becomes Disabled.

2. **Organization.**

2.1 **Formation.** The Members hereby agree to adopt the Articles which were filed with the South Carolina Secretary of State on February 1, 2010. Further, the Members agree to associate themselves as Members of the Company, commensurate with the execution of this Agreement.

2.2 **Designated Office.** The designated office of the Company shall be located at, 5 Gumtree Road, Unit C-3, Hilton Head Island, SC 29926, or such other location as may be hereafter determined by the Members.

2.3 **Limited Liability Company.** The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and this Agreement may not be construed to suggest otherwise.

2.4 **Foreign Qualifications.** Prior to the Company's conducting business in any jurisdiction other than South Carolina, the Manager shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Manager, with all requirements necessary to qualify the Company as a foreign Corporation in that jurisdiction.

2.5 **Purpose of Company.** The Company is for insurance business. The Company may engage in any other activities upon the unanimous vote of all Members.

3. **Capital Contributions and Related Matters.**

3.1 **Initial Capital Contributions.** The Members shall make their initial capital contributions to the Company as reflected below:

THOMAS J. ENRIGHT	\$100.00
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3.2 **Default.** In the event a Member fails to pay his initial, or any additional capital contribution when due and such default is not cured within ten (10) days after written notice to the defaulting Member by the Manager requesting that such capital contribution be paid, the Manager, on behalf of the Company, may commence legal proceedings against the defaulting Member to collect the due and unpaid amount the capital contribution plus the expenses of collection, including court costs and attorneys' fees, in which case the defaulting Member would remain a Member upon successful enforcement and payment in full of such capital contribution (and any interest thereon as may be awarded), plus the expenses of collection.

3.3 Additional Capital Contributions. Other than the initial capital contributions made pursuant to Section 3.1, no Member shall be required or be allowed to make any additional capital contributions to the Company, unless all of the Members agree to the making of such additional capital contributions.

3.4 Withdrawal of Capital. The Members shall only be entitled to withdraw or to receive distributions of their capital contributions in accordance with the terms and conditions of this Agreement.

3.5 Interest on Capital Contributions. No interest shall accrue on any capital contributions made by the Members.

3.6 Loans By Members. A Member shall be allowed to make a loan to the Company if all of the Members agree to the making of said loan.

3.7 Capital Accounts. The Company shall establish and maintain for each Member a capital account initially reflecting an amount equal to each Member's initial capital contribution. The capital account shall be adjusted from time to time to reflect the Member's additional capital contributions, if any, allocable shares of net profits or net losses or any items thereof, distributions made to any Member, and as otherwise required by the provisions of this Agreement and the Code and its regulations including, but not limited to, treasury regulation 1.704-1(b)(2)(iv).

4. Profits, Losses, Distributions and Taxable Income.

4.1 Allocation of Profit and Loss and Taxable Income, Gain, Loss, Deduction, and Credit. Both profits and losses of the Company and, items of taxable income, gain, loss, deduction and credit, shall be apportioned among the Members in accordance to the percentages set forth below: (hereinafter referred to as the "Ownership Percentage"):

THOMAS J. ENRIGHT

100.00%

4.2 Distribution to Members. The Company may make distributions of cash or cash equivalents to the Members at least once annually if funds are available. The Members shall unanimously determine the total amount of distribution which may be made to the Members, and each Member shall share in such total distribution in accordance with his Ownership Percentage as set forth in Section 4.1.

4.3 Distributions in Kind. Except as provided in Section 5.3, hereof, no Member may demand or receive a distribution from the Company in any form other than cash or cash equivalents.

4.4 Limitation on Distributions. No distribution may be made by the Company if after giving effect to the distribution: (a) the company would not be able to pay its debts as they become due in the usual course of business; or (b) the assets of the

Company would be less than the sum of its liabilities plus, the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members upon dissolution which are superior to the rights of the Member receiving the distribution.

5. Management of the Company and Deadlock Provision.

5.1 Voting by Members. All decisions effecting the operations of the Company shall be decided by the unanimous vote of the Members, without the requirement of a meeting or an action taken by written consent.

5.2 Powers of Members. The management, operation and control of the Company and its business and affairs shall rest exclusively with the Members. Subject to Section 5.1, the Members shall have all the rights and powers as are necessary, advisable or convenient for the discharge of the duties of the Members under this Agreement. Without limiting the foregoing, upon the requisite vote, the Members shall have the powers to perform the following acts on behalf of the Company:

(a) Execute and deliver any and all agreements, contracts, documents, certifications and instruments necessary or convenient in connection with the carrying on in the usual way of the business and affairs of the Company; and

(b) Execute and deliver any deed, lease, mortgage, mortgage note, bill of sale, easement, license, contract or other instrument purporting to convey, sell, exchange or encumber all or any part of the Company's property; and

(c) Borrow money and issue notes of debt, and to assume existing indebtedness necessary to effectuate the Company's business; and

(d) Prepay, in whole or in part, refinance, increase, modify or extend any mortgage or other indebtedness relating to the Company; and

(e) Deposit or invest Company funds in such interest bearing or non interest bearing investments or bank accounts as they deem advisable to the extent such funds are not then required for Company operations, and are not required to be distributed, pursuant to this Agreement; and

(f) Retain or employ and coordinate the services of employees, independent contractors, supervisors, accountants, attorneys and other persons necessary or appropriate to carry out the business and purposes of the Company; and

(g) Engage in any kind of activity and to perform and carry out such contracts of any kind necessary to operate the business and purposes of the Company, in accordance with this Agreement; and

(h) Pay all debts and other obligations of the Company, to the extent that funds of the Company are available therefor.

5.3 Deadlock on Major Decision; Occurrence of a Significant Event. On the occurrence of a (i) Significant Event; or (ii) if the Members do not reach unanimity on a Major Decision; or (iii) pursuant to Section 6.2, hereof, either Member may invoke the procedure set for below by providing written notice to the other Member, in accordance with Section 9.8.

(a) Either Member may provide written notice to the other Member which states the Major Decision or Significant Event which invokes this Section;

(b) Upon receipt of the written notice, the Members shall commence the voluntary dissolution of the Company and shall divided the Company's assets in the following manner:

(1) The Members shall sell the real property of the Company in a manner mutually agreed to by all Members; or

(2) If the Members can not reach mutual agreement on the sales price, then the Members shall retain a MAI certified appraiser to determine the fair market value of each unit or parcel of real property owned by the Company. After the appraisal is obtained, the Members shall then agree to a sale of the real property by utilizing the appraised values to sell the real property.

(c) Once an agreement has occurred with respect the division of the real property, pursuant to Section 5.3(b)(1) or (2) and within ninety (90) days, the Members shall obtain separate financing for the real property to be distributed, realizing the debt of the Company shall be paid in full during the dissolution process. Once the financing is obtained by both Members, the Company shall cooperate by deeding the real property, to the appropriate Member, in accordance with this Section 5.3. Members shall use their best efforts to obtain the required financing.

5.4 Conflicts of Interest. The pursuit of other ventures and activities by Members, even if directly competitive with the business of the Company, is hereby consented to by the Members and shall not be deemed wrongful or improper. No Member shall be obligated to present any particular investment opportunity to the Company, even if such opportunity is of a character which, if presented to the Company, could be taken by the Company.

6. Transfers of Interests; Admission.

6.1 Member: Transfer Restrictions. No Member may sell, assign, transfer, pledge, hypothecate or otherwise dispose of his Member interest or any portion of the interest, unless the transfer meets the requirements of Section 6.2. Any transfer of any Member's interest in violation

of this Agreement shall be void and of no effect. All transfers satisfying the requirement of this Section 6 shall be deemed approved by each Member of the Company.

6.2 Permitted Transfers. The gratuitous transfer by a Member of their distributional interest in the Company (as defined in South Carolina Code § 33-44-101) to the estate of the Member shall be permitted. No other transfers shall be permitted except by unanimous, written consent of all Members.

6.3 Distributions and Allocations in Respect to Transferred Interests. If any Member's interest is sold, assigned or transferred, or any Person is otherwise admitted as a Member during any fiscal year in compliance with the provisions of this Section 6; net profits, net losses, each item thereof, and all other items attributable to such interest for such fiscal year shall be allocated among the Members by taking into account their varying interests during such fiscal year in accordance with Code Section 706(d). Unless otherwise required by the Treas. Regs., such sale, assignment, transfer or admission shall be deemed to have occurred at the end of the calendar month during which such event shall have actually occurred, and such allocations shall be determined and made pursuant to a pro forma closing of the books of the Company as of the end of such month. With respect to a transferred Member's interest or any portion of the interest, all distributions on or before the deemed date of such transfer shall be made to the transferor and all distributions thereafter shall be made to the transferee. The Company, the Members and the Manager shall not incur any liability for making allocations and distributions in accordance with the provisions of this Section.

6.4 Section 754 Election. Upon the transfer of any interest in the Company, the Company may elect, in the sole discretion of the Managers to make an election under Code § 754.

6.5 Right of First Refusal; Deadlock Provision. If a Member receives a bona fide offer (hereinafter referred to as the "Offer") which the Member (hereinafter referred to as the "Selling Member") proposes to accept, whether or not solicited, to sell or otherwise dispose of all or any portion of his interest, then the Selling Member shall furnish to the non selling Member written notice of the receipt of the Offer together with the principal terms and conditions of the sale, including the minimum price (hereinafter referred to as the "Sale Price") at which such interest is proposed to be sold, and a statement as to the identity of the real party in interest making the Offer. The non selling Member or his designee (which can be any Person) shall then have the right to purchase the interest (hereinafter referred to as the "Offered Interest") proposed to be sold by the Selling Member, upon and subject to the terms and conditions as set forth in this Section 6.2(a) or, alternatively, the non Selling Member may elect, by providing written notice within thirty (30) days of receipt the Offer, to invoke Section 5.3.

(a) The price and terms at which the Offered Interest may be purchased shall be the price and terms contained in the Offer. If the price contained in the Offer shall consist (in whole or in part) of consideration other than cash, payable at the closing thereof or at a later date, the cash equivalent fair market value of such other consideration shall be included in the price at which the Offered Interest may be so purchased.

(b) The Member or his designee shall have thirty (30) days after receipt of the notice to elect to purchase the Offered Interest. The purchase transaction shall be consummated within thirty (30) days following the date

of the Member's or his designee's election to purchase the Offered Interest. At the closing, unless otherwise stipulated in the Offer, the Member or his designee shall deliver to the Selling Member the full purchase price, against delivery of an instrument appropriately transferring the Offered Interest sold thereby.

7. **Death, Disability or Bankruptcy of a Member.** On account of the death, disability, or bankruptcy of a Member (hereinafter referred to as the "Transferring Member"), the Company shall enjoy an option to purchase the Transferring Member's interest in the Company. If the option to purchase is exercised by the Company, it shall pay the purchase price in accordance with Section 7.2. In the Company elects to purchase the interest of a Member under this Section 7, it shall provide written notice to the Member's representative or estate.

7.1 **Purchase Price for Member's Interest.** If this option to purchase is exercised by the Company, the purchase price shall be the fair market value of the Transferring Member's interest in the Company. For purposes of this Agreement, the fair market value of the Transferring Member's interest shall be as agreed upon by the Company and the Transferring Member's representative or estate. If a valuation can not be agreed upon, then such fair market value shall be determined by two independent M.A.I. appraisers, one selected by the Company and one selected by the Transferring Member's representative or estate. If the two appraisers set the fair market value at amounts which do not differ by more than thirty percent (30%), then the average of the two values shall be the fair market value of the interest. If the differential of the two appraisals is greater than thirty percent (30%), then a third appraiser shall be appointed, by mutual agreement of the two appraisers, for the purpose of choosing which of the two appraisals more nearly reflects the fair market value of the interest. Whichever value the third appraiser chooses shall be the fair market value of the interest.

7.2 **Terms of Purchase.** If the Company elects to purchase the Transferring Member's interest in the Company, then the Company shall have the option of remitting the purchase price in a lump sum, or with a down payment equal to fifty percent (50%) of the purchase price and a promissory note for the remainder of the purchase price. If the purchase price is paid in a lump sum, then it shall be made within ninety (90) days of the written election by the Company to purchase the interest. If the Company elects to make payment which includes a promissory note, the amount of the note shall be paid in equal consecutive monthly installments over a number of months, not exceeding one hundred twenty months (120). The down payment of the purchase price shall be made within ninety (90) days of the written notice by the Company to purchase the interest. Any subsequent payments due thereafter shall commence on the first day of the first month following the payment of the down payment. Interest on the promissory note shall be adjusted annually and shall be at the prime rate of bank in which the Company has its primary operating account. The promissory note shall be subject to prepayment, without penalty, in whole or in part, at any time and, provided further, that the amounts due on account of the promissory note shall be accelerated upon default in the payment of the principal or interest due on said note.

7.3 **Transfer of Member's Interest.** Each Member agrees that upon receipt of cash or cash equivalents, or a promissory note in full payment of the purchase price for their interest in the Company, the legal representative of their estate will execute and deliver to the Company all the

documents which are required to transfer the Transferring Member's interest in the Company to the Company.

Dissolution Acts. The Company shall only be dissolved upon the occurrence of any one or more of the following events:

- 7.1 In accordance with the terms and conditions set forth in Section 5.3; or
- 7.2 The completion of the term of the Company as set forth in the Articles; or
- 7.3 Written consent of all Members.

8. **Distribution of Proceeds on Dissolution.** Except as otherwise provided in Section 5.3, hereof, upon the dissolution of the Company, the Members shall proceed with the liquidation of the Company, in an orderly and businesslike manner, and the proceeds therefrom and any other funds and assets of the Company shall be applied and distributed, within ninety (90) days, in the following order of priority:

- 8.1 First, to the payment of all debts and liabilities of the Company owed to non-Members of the Company; and
- 8.2 Second, to the payment of all debts owed to a Member on account of a loan made to the Company; and
- 8.3 Third, to the Members in an amount equal to their positive capital account balances taking into account all adjustments for the year in which the liquidation occurs; and
- 8.4 Fourth, to the Members in accordance with their Ownership Percentages.

9. **Miscellaneous Matters.**

9.1 **Captions.** Section and paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit extend or describe the scope of this Agreement or the intent of any provision hereof.

9.2 **Variation in Pronouns.** All pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons.

9.3 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina. The Members agree that jurisdiction and venue for a dispute between them shall reside in the State of South Carolina.

9.4 Validity. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

9.5 Benefit. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their heirs, personal representatives, successors and assigns, except this is not intended for the benefit of creditors or anyone else.

9.6 Entire Agreement. It is understood and agreed that all understandings and agreements between the parties hereto are hereby merged in this Agreement which alone, fully and completely expresses their agreement and supersedes all prior agreements, both written and oral. Further, this Agreement is entered into after full investigation, neither party relying upon any statements or representations not embodied in this Agreement.

9.7 Amendments and Modifications. This Agreement may only be amended or modified by a written instrument executed by all the Members.

9.8 Notices. All notices, consents, approvals and the like required under any of the provisions of this Agreement shall be in writing and shall be deemed to be effective (a) if personally delivered, upon receipt, (b) if sent by overnight courier (such as Federal Express), upon delivery, (c) if sent by U.S. Mail registered or certified, return receipt requested, with sufficient postage affixed thereto, upon receipt, addressed as follows:

Thomas J. Enright
5 Gumtree Road, Unit C-3
Hilton Head Island, SC 29926

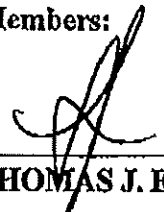
or to such other address as such party shall specify in writing to the other party hereto.

9.9 Indemnification. The Company shall indemnify any Member made a party to any proceeding or action, in law or equity, by reason of the fact that he is or was a Member of the Company, against judgments, penalties, fines, settlements and reasonable expenses, including attorney's fees incurred by the Member connection with such proceeding or action as long as the Member's conduct was not grossly negligent, was in substantial conformity with the terms of this Agreement, and he reasonably believed his conduct to be in the best interest of the Company.

IN WITNESS WHEREOF, the undersigned has executed this Agreement effective as of the date first above written.

Witnesses:

Members:



THOMAS J. ENRIGHT